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Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1971

~~No. 1842~~

JEFFERSON COUNTY TEACHERS ASSOCIATION
KENTUCKY EDUCATION ASSOCIATION
LOUISVILLE AND JEFFERSON COUNTY FEDERATION OF TEACHERS, LOCAL 672
WALLACE CANTRELL
THOMAS D. BELEW
MARY LOU JACKSON and
JAMES O. HALCOMB, JR. - - - Petitioners

versus

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - Respondent

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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WALLACE CANTRELL
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v.

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY - - - - - - *Respondent*

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

Respondent, Board of Education of Jefferson County, Kentucky, in opposition to the Petitioners' pra[redacted]for a Writ of Certiorari to review the Judgment of the Court of Appeals of Kentucky entered herein on October 30, 1970, respectfully states to the Court:

REFERENCE TO OPINION BELOW

The Kentucky Court of Appeals' opinion is to be found in 463 S. W. 2d 627. It is attached as Appendix A to the Petition for Writ of Certiorari herein, and the Mandate affirming its Judgment on Petitioners' Motion for Rehearing is attached as Appendix A-1 to said Petition.

JURISDICTION

The Respondent adopts Petitioners' statement of Jurisdiction, and states to the Court that the time for filing this Brief in Opposition was extended by the Clerk of this Court to and including August 17, 1971 under Paragraph 5 of Rule 34 of the Rules of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES WHICH THE CASE INVOLVES

Respondent adopts Petitioners' statement of the "Constitutional Provisions and Statutes Which The Case Involves."

STATEMENT OF CASE

Respondent accepts Petitioners' "Statement of Facts" as its statement of the case including all Appendices thereto.

QUESTIONS PRESENTED

1. Has not this Court previously decided all issues presented by Petitioners when it denied Certiorari on June 7, 1971 in Case No. 1415, *Kankakee Federation of Teachers Local No. 886, et al., Petitioners* v. *Board of Education of the Kankakee School District No. 111, etc.*, 29 L. Ed. 2d 679?

2. Should this Court grant Certiorari where there is no issue involving the validity of a state statute on the ground of its being repugnant to the Constitution of the United States?

REASONS FOR DENYING CERTIORARI

1. The Federal question raised and sought to be reviewed by the Petitioner herein was heretofore determined by this Court adversely to Petitioner in Case No. 1415, *Kankakee Federation of Teachers Local No. 886, et al., Petitioners* v. *Board of Education of the Kankakee School District No. 111, etc.*, 29 L. Ed. 2d 679, when Certiorari was denied on June 7, 1971.

In that case this Court denied Certiorari to review the Illinois Supreme Court's Opinion found at 46 Ill. 2d 439, 264 N. E. 2d 18, 75 LRRM 2325. The *Kankakee* case involved all the issues presented herein and is dispositive of this case.

2. Petitioners seek to invoke this Court's jurisdiction under Title 28, United States Code, Section 1257. Apparently, they seek to predicate their right to strike on Kentucky Revised Statutes, Section 336.130, yet have this Court declare this statute

"repugnant to the constitution . . . of the United States" as required by 28 USC, Section 1257. We believe Petitioners should not be allowed this inconsistency.

Moreover, the Petitioners state the Federal question raised herein is found in their Answer filed in the lower court proceeding, referred to as being on pages 13 to 15 of the Transcript of Record. Therefore, Petitioners must base their claim for jurisdiction herein as a result of the allegations contained in Petitioners' pleadings recited on the referred-to transcript pages wherein they contend their rights were violated under Sections 1, 2, 8 and 25 of the Constitution of Kentucky, "under the laws of the State of Kentucky," specifically KRS 336.130, and "under the Constitution of the United States of America and the First, Thirteenth, and Fourteenth Amendments thereto" as well as allegations that the Complaint failed to support a class action under the Kentucky Rules of Civil Procedure.

Respondent submits that the thrust of Petitioners' argument as contained in their "Reasons for Granting the Writ" is based principally not upon a challenge to the validity of the state statute in question, KRS 336.130, but upon "the interpretation" given to that statute by the Court of Appeals of Kentucky. In Petitioners' Petition, page 4, paragraph No. 2, which is illustrative thereof, the Petitioners contend that the Court of Appeals of Kentucky "ignored the plain wording" of the statute; that the statute "contains no definition of the word 'employees'," and that the Court of Appeals wrongly interpreted the word "employee" from the

Act. It is clear from a long list of decisions of this Court that when a state statute is challenged, the construction of that statute as adopted by the State court of last resort is a question of state law, and this Court historically has accepted as it "must" the interpretation and construction given by the state court. *Kingsley Corp.* v. *Regents of the University of N. Y.*, 360 U. S. 684, 3 L. Ed. 2d 1512, 1516, 79 S. Ct. 1362; *Cramp* v. *Board of Public Instruction,* 368 U. S. 278, 7 L. Ed. 2d 285, 291, 82 S. Ct. 275; *N.A.A.C.P.* v. *Button,* 371 U. S. 415, 417, 9 L. Ed. 2d 405, 83 S. Ct. 328; *The Commercial Bank of Cincinnati* v. *Buckingham's Executors,* 5 Howard 317, 343, 12 L. Ed. 169, and *Ward* v. *Krinsky,* 259 U. S. 503, 66 L. Ed. 1033, 1066. Further, this Court in the case of *Farncomb* v. *City and County of Denver,* 252 U. S. 7, 64 L. Ed. 424, 426 made clear that "when dealing with the constitutionality of state statutes challenged under the Fourteenth Amendment, (the Court) accepts the meaning thereof as construed by the highest court of the state. *St. Louis & K.C. Land Co.* v. *Kansas City,* 241 U. S. 419, 427, 60 L. Ed. 1072, 1078, 38 Sup. Ct. Rep. 647." In that case the determination by the Supreme Court of the State of Colorado that a certain state statute provision afforded due process of law was accepted by the Supreme Court of the United States in upholding the constitutional validity of said statute. Also see *Ward* v. *Krinsky, supra,* 66 L. Ed. 1033, 1043.

Although the Petitioners did not explain how their rights were violated under the Thirteenth Amendment of the United States Constitution (involuntary servi-

tude), that contention has been answered time and time again by numerous court decisions, some of which were referred to by the Court of Appeals of Kentucky in its opinion recited on page 20 of the Petitioner's Petition.

Answering Petitioners further contention, under the First Amendment to the United States Constitution, which protects the rights of free speech and public assembly, this Court has ruled that where the contract of employment provides for arbitration that method would be the proper one to settle a labor grievance. *Teamster's Union* v. *Lucas Flour Company,* 369 U. S. 95, 7 L. Ed. 2d 593, 82 S. Ct. 571.

In regard to the contention that the Respondent violated the rights of the Petitioners under Sections 1, 2, 8 and 25 of the Constitution of Kentucky and under the Kentucky Rules of Civil Procedure, it is elementary that this Court accepts the interpretation given by the highest court of the state to the provisions of its state constitution as well as the applicability of procedural rules adopted by the state's highest court. Final determination of this question is strictly for the State's highest court and not one that in any way could demonstrate the involvement of a Federal question; hence, this Court is without jurisdiction to consider such contentions.

CONCLUSION

Respondent respectfully contends that the Petition for Certiorari in this action be denied because:

1. No Federal question was raised regarding the constitutionality of any state statute or right of which this Court will accept jurisdiction.

2. The issue involved in this action under the principle of stare decisis was decided by this Court on June 7, 1971 in Case No. 1415.

Hence, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATION

This is to certify that pursuant to the provisions of Part VIII, Section 33, Rules of the Supreme Court, that three (3) copies of this Brief for Respondent have been served by depositing same in a United States mail box with first class postage prepaid addressed to each counsel of record for the Petitioners.

E. Gerry Barker

E. GERRY BARKER